No. 41. McCarthy et al., Trustees of the Denver & Rio Grande Western Railroad Co., et al. *v.* Bruner. Certiorari, 322 U. S. 718, to the Supreme Court of Utah. Argued October 19, 1944. Decided November 13, 1944. *Per Curiam:* In this case, certiorari was granted upon a petition which urged that the Utah Supreme Court erred in affirming a judgment for the respondent upon the ground that a verdict could have been directed for respondent

upon the issues of negligence and contributory negligence. On oral argument and submission, it appears that these contentions are not decisive of the case, since the issues of negligence and contributory negligence were in fact submitted to the jury, and since petitioners' contentions, made after the granting of certiorari, that the trial court erred in instructing or failing to instruct the jury on these issues, are either insubstantial or not properly raised on the record. The writ of certiorari is therefore dismissed as improvidently granted. *Mr. W. Q. Van Cott*, with whom *Mr. P. T. Farnsworth, Jr.* was on the brief, for petitioners. *Mr. Parnell Black*, with whom *Messrs. Calvin W. Rawlings* and *Harold E. Wallace* were on the brief, for respondent. Reported below: 105 Utah 399, 142 P. 2d 649.